

AMENDED IN SENATE APRIL 15, 2015

SENATE BILL

No. 762

Introduced by Senator Wolk

February 27, 2015

An act to add Article 3.7 (commencing with Section 20155) to Chapter 1 of Part 3 of Division 2 of the Public Contract Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

SB 762, as amended, Wolk. Counties: competitive bidding: best value: pilot program.

The Local Agency Public Construction Act requires counties, among others, to comply with specified procedures for contracting for public works projects, including, the use of a competitive bidding process and awarding contracts to the lowest responsible bidder. Existing law provides that specified provisions of the act applicable to public works contracts awarded by counties, as specified, do not apply to certain contracts by the County of Napa and the County of San Diego.

This bill would establish a pilot program to allow counties to select the lowest responsible bidder on the basis of best value, ~~as defined. This defined, for construction projects in excess of \$1,000,000.~~ The bill would require that bidders verify specified information under oath, thereby imposing a state-mandated local program by creating a new crime.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Article 3.7 (commencing with Section 20155) is
2 added to Chapter 1 of Part 3 of Division 2 of the Public Contract
3 Code, to read:

4
5 Article 3.7. Best Value Construction Contracting for Counties
6 Pilot Program
7

8 20155. (a) This article provides for a pilot program for counties
9 ~~when awarding construction contracts.~~ *for construction projects*
10 *in excess of one million dollars (\$1,000,000).*

11 (b) The board of supervisors of any county shall let any contract
12 for a *construction* project pursuant to this article to the lowest
13 responsible bidder or else reject all bids.

14 (c) The lowest responsible bidder may be selected on the basis
15 of the best value to a county. In order to implement this method
16 of selection, the board of supervisors shall adopt and publish
17 procedures and required criteria that ensure that all selections are
18 conducted in a fair and impartial manner. These procedures shall
19 conform to Sections 20155.2 and 20155.3 and shall be mandatory
20 for counties who choose to participate in the pilot program.

21 (d) If the board of supervisors deems it to be in the best interest
22 of the county, the board of ~~supervisors may,~~ *supervisors*, on the
23 refusal or failure of the successful bidder for a project to execute
24 a tendered contract, *may* award it to the second lowest responsible
25 bidder. If the second lowest responsible bidder fails or refuses to
26 execute the contract, the board of supervisors may likewise award
27 it to the third lowest responsible bidder.

28 20155.1. As used in this article:

29 (a) “Best value” means a procurement process whereby the
30 lowest responsible bidder may be selected on the basis of objective
31 criteria with the resulting selection representing the best
32 combination of price and qualifications.

33 (b) “Best value contract” means a contract entered into pursuant
34 to this article.

1 (c) “Best value contractor” means a properly licensed person,
2 firm, or corporation that submits a bid for, or is awarded, a best
3 value contract.

4 (d) “Demonstrated management competency” means the
5 experience, competency, capability, and capacity of the proposed
6 management staffing to complete projects of similar size, scope,
7 or complexity.

8 (e) “Financial condition” means the financial resources needed
9 to perform the contract. The criteria used to evaluate a bidder’s
10 financial condition shall include, at a minimum, capacity to obtain
11 all required payment bonds, performance bonds, and liability
12 insurance.

13 (f) “Labor compliance” means the ability to comply with, and
14 past performance with, contract and statutory requirements for the
15 payment of wages and qualifications of the workforce. The criteria
16 used to evaluate a bidder’s labor compliance shall include, as a
17 minimum, the bidder’s ability to comply with the apprenticeship
18 requirements of the California Apprenticeship Council and the
19 Department of Industrial Relations, its past conformance with
20 those requirements, and its past conformance with requirements
21 to pay prevailing wages on public works projects.

22 (g) “Qualifications” means the financial condition, relevant
23 experience, demonstrated management competency, labor
24 compliance, the safety record of the bidder, and, if required by the
25 bidding documents, some or all of the preceding qualifications as
26 they pertain to subcontractors proposed to be used by the bidder
27 for designated portions of the work.

28 (h) “Relevant experience” means the experience, competency,
29 capability, and capacity to complete projects of similar size, scope,
30 or complexity.

31 (i) “Safety record” means the prior history concerning the safe
32 performance of construction contracts. The criteria used to evaluate
33 a bidder’s safety record shall include, at a minimum, its experience
34 modification rate for the most recent three-year period, and its
35 average total recordable injury or illness rate and average lost work
36 rate for the most recent three-year period.

37 20155.2. A county shall proceed in accordance with the
38 following when awarding best value contracts under this article:

39 (a) A county shall prepare a solicitation for bids and give notice
40 pursuant to Section 20125.

(b) A county shall establish a procedure to prequalify bidders pursuant to Section 20101. The information required pursuant to this section shall be verified under oath by the bidder in the manner in which civil pleadings in civil actions are verified. Information submitted by the bidder as part of the evaluation process shall not be open to public inspection to the extent that information is exempt from disclosure under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

(c) Each solicitation for bids shall do all of the following:

(1) Invite prequalified bidders to submit sealed bids in the manner prescribed by this article.

(2) Include a section identifying and describing the following:

(A) Criteria that a county will consider in evaluating bids.

(B) The methodology and rating or weighting system that will be used by a county in evaluating bids.

(C) The relative importance or weight assigned to the criteria identified in the request for bids.

(d) Final evaluation of the best value contractor shall be done in a manner that prevents cost or price information from being revealed to the committee evaluating the qualifications of the bidders prior to completion and announcement of that committee's decision.

20155.3. Selection of the best value contractor shall be made as follows:

(a) ~~A~~An evaluation committee appointed by the county shall evaluate the qualifications of the bidders based solely upon the criteria set forth in the solicitation documents, and shall assign a qualifications score to each bid.

(b) A county shall not award a contract for a construction project pursuant to this article if a solicitation for bids for that construction project results in the submission of fewer than three responsive bids to the county for evaluation.

~~(b)~~

(c) The award of the contract shall be made to the bidder whose bid is determined by a county, in writing, to be the best value to a county. To determine the best value contractor, the county shall divide each bidder's price by its qualifications score. The lowest resulting cost per quality point will represent the best value bid.

~~(e)~~

1 (d) A county shall issue a written decision of its contract award.

2 ~~(d)~~

3 (e) Upon issuance of a contract award, a county shall publicly
4 announce its award identifying the best value contractor to which
5 the award is made, the project, the project price, and the selected
6 best value contractor's score based on the evaluation criteria listed
7 in the request for bids. The notice of award shall be made public
8 and include the score of the selected best value contractor in
9 relation to all other responsive bidders and their respective prices.
10 The contract file shall include documentation sufficient to support
11 the decision to award.

12 20155.4. (a) ~~On or before~~ *Before* January 1, 2020, the board
13 of supervisors of a participating county shall submit a report to
14 the appropriate policy committees of the Legislature and the Joint
15 Legislative Budget Committee. The report shall include, but is not
16 limited to, the following information:

17 (1) A description of the projects awarded using the best value
18 procedures.

19 (2) The contract award amounts.

20 (3) The best value contractors awarded the projects.

21 (4) A description of any written protests concerning any aspect
22 of the solicitation, bid, or award of the best value contracts,
23 including the resolution of the protests.

24 (5) A description of the prequalification process.

25 (6) The criteria used to evaluate the bids, including the weighting
26 of the criteria and an assessment of the effectiveness of the
27 methodology.

28 (7) If a project awarded under this article has been completed,
29 an assessment of the project performance, to include a summary
30 of any delays or cost increases.

31 (b) A report submitted pursuant to subdivision (a) shall be
32 submitted in compliance with Section 9795 of the Government
33 Code.

34 (c) This section shall remain in effect only until January 1, 2020,
35 and as of that date is repealed, unless a later enacted statute, that
36 is enacted before January 1, 2020, deletes or extends that date.

37 20155.5. Except as otherwise provided in this article, this article
38 is not intended to change in any manner any guideline, criteria,
39 procedure, or requirement of a county to let any contract for a
40 project to the lowest responsible bidder or else reject all bids.

1 SEC. 2. No reimbursement is required by this act pursuant to
2 Section 6 of Article XIII B of the California Constitution because
3 the only costs that may be incurred by a local agency or school
4 district will be incurred because this act creates a new crime or
5 infraction, eliminates a crime or infraction, or changes the penalty
6 for a crime or infraction, within the meaning of Section 17556 of
7 the Government Code, or changes the definition of a crime within
8 the meaning of Section 6 of Article XIII B of the California
9 Constitution.

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